

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

LEOPOLDO CARDENAS,

Plaintiff,

v.

ELDON VAIL, *et al.*,

Defendants.

Case No. C09-5602RJB

ORDER ADOPTING REPORT
AND RECOMMENDATION

This matter comes before the Court on the Report and Recommendation of U.S. Magistrate Judge J. Richard Creatura. Dkt. 51. The Court has considered the Report and Recommendation, objections, and the record.

The December 17, 2010, Report and Recommendation recommends the Defendants' motion for summary judgment be granted and the case dismissed. Dkt. 51. The Report and Recommendation also recommends that Plaintiff's cross motion for summary judgment be denied. *Id.* The facts and procedural history are in the Report and Recommendation and are adopted here by reference. *Id.*, at 1-3. Plaintiff filed Objections to the Report and Recommendation on January 13, 2011. Dkt. 52.

Plaintiff's objections are without merit and the Report and Recommendation should be adopted. The Report and Recommendation recommends that Plaintiff's Fourteenth Amendment procedural due process claims be dismissed because Plaintiff has two venues in which to challenge Defendants' decisions regarding Plaintiff's mail: the state tort claims act and the prison's mail appeal process. Dkt. 51. Plaintiff argues that his claim should not be dismissed because he exhausted these avenues. Dkt. 52. Plaintiff fails to show that he fully proceeded in these venues. Further, as stated in the Report and Recommendation, whether he exhausted his claims or not, procedural due process requires only that those avenues be available. Dkt. 51.

1 Plaintiff objects to dismissal of his "First and Fourteenth Amendment Claims" by arguing that he
2 has a First Amendment Right to read books and magazines while in prison. Dkt. 52, at 8. The Report and
3 Recommendation recommends dismissing his claim, finding even if Plaintiff's First Amendment rights
4 were implicated, the Defendants' actions here had a legitimate penological goals, and so the claim should
5 be dismissed. Dkt. 51. Plaintiff fails to make a showing to the contrary.

6 Plaintiff argues that the Defendants' actions regarding his mail were retaliatory. Dkt. 52. The
7 Report and Recommendation notes that Plaintiff has failed to provide any evidence that exercise of any
8 constitutional right was linked to the allegedly retaliatory action. Dkt. 51. Plaintiff does not make any
9 such showing in his objections or elsewhere in the record.

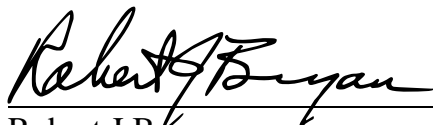
10 Further, as stated in Defendants' Motion for Summary Judgment, to the extent that Plaintiff makes
11 the following claims: "larceny, frauds and other swindles" (Dkt. 5) and to "delays or destruction of mail
12 or newspapers," (Dkt. 5), those claims should be dismissed. Plaintiff has failed to show that there are any
13 issues of material fact, and Defendants are entitled to a judgment as a matter of law on those claims.

14 It is **ORDERED** that:

- 15 • The Report and Recommendation (Dkt. 51) is **ADOPTED**;
- 16 • Defendants' Motion for Summary Judgment (Dkt. 40) is **GRANTED**;
- 17 • Plaintiff's Cross Motion for Summary Judgment (Dkt. 41) is **DENIED**;
- 18 • The case is **DISMISSED**.
- 19 • The Clerk is directed to sent copies of this order to Plaintiff, counsel for Defendants, and to U.S.

20 Magistrate Judge J. Richard Creatura.

21 DATED this 4th day of February, 2011.

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23 Robert J Bryan
24 United States District Judge
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